



APPENDIX A

Revenue Act of 1938, c. 289, 52 Stat. 447:

SEC. 119. INCOME FROM SOURCES WITHIN UNITED STATES.

(a) *Gross income from sources in United States.*—The following items of gross income shall be treated as income from sources within the United States:

(1) *Interest.*—Interest from the United States, any Territory, any political subdivision of a Territory, or the District of Columbia, and interest on bonds, notes, or other interest-bearing obligations of residents, corporate or otherwise, not including—

* * * * *

(2) *Dividends.*—The amount received as dividends—

(A) from a domestic corporation * * *

(B) from a foreign corporation * * *; but dividends from a foreign corporation shall, for the purposes of section 131 (relating to foreign tax credit), be treated as income from sources without the United States;

(3) *Personal services.*—Compensation for labor or personal services performed in the United States, * * *

(4) *Rentals and royalties.*—Rentals or royalties from property located in the United States or from any interest in such property, including rentals or royalties for the use of or for the privilege of using in the United States, patents, copyrights, secret processes and formulas, good will, trademarks, trade brands, franchises, and other like property; and

(5) *Sale of real property*.—Gains, profits, and income from the sale of real property located in the United States.

(6) *Sale of personal property*.—For gains, profits, and income from the sale of personal property, see subsection (e).

(b) *Net income from sources in United States*.—From the items of gross income specified in subsection (a) of this section there shall be deducted the expenses, losses, and other deductions properly apportioned or allocated thereto and a ratable part of any expenses, losses, or other deductions which can not definitely be allocated to some item or class of gross income. The remainder, if any, shall be included in full as net income from sources within the United States.

(c) *Gross income from sources without United States*.—The following items of gross income shall be treated as income from sources without the United States:

(1) Interest other than that derived from sources within the United States as provided in subsection (a) (1) of this section;

(2) Dividends other than those derived from sources within the United States as provided in subsection (a) (2) of this section;

(3) Compensation for labor or personal services performed without the United States;

(4) Rentals or royalties from property located without the United States or from any interest in such property, including rentals or royalties for the use of or for the privilege of using without the United States, patents, copyrights, secret processes and formulas, good will, trade-marks, trade brands, franchises, and other like properties; and

(5) Gains, profits, and income from the sale of real property located without the United States.

(d) *Net income from sources without United States.*—From the items of gross income specified in subsection (e) of this section there shall be deducted the expenses, losses, and other deductions properly apportioned or allocated thereto, and a ratable part of any expenses, losses, or other deductions which cannot definitely be allocated to some item or class of gross income. The remainder, if any, shall be treated in full as net income from sources without the United States.

(e) *Income from sources partly within and partly without United States.*—Items of gross income, expenses, losses and deductions, other than those specified in subsections (a) and (e) of this section, shall be allocated or apportioned to sources within or without the United States, under rules and regulations prescribed by the Commissioner with the approval of the Secretary. Where items of gross income are separately allocated to sources within the United States, there shall be deducted (for the purpose of computing the net income therefrom) the expenses, losses, and other deductions properly apportioned or allocated thereto and a ratable part of other expenses, losses or other deductions which can not definitely be allocated to some item or class of gross income. The remainder, if any, shall be included in full as net income from sources within the United States. In the case of gross income derived from sources partly within and partly without the United States, the net income may first be computed by deducting the ex-

penses, losses, or other deductions apportioned or allocated thereto and a ratable part of any expenses, losses, or other deductions which can not definitely be allocated to some items or class of gross income; and the portion of such net income attributable to sources within the United States may be determined by processes or formulas of general apportionment prescribed by the Commissioner with the approval of the Secretary. * * *

SEC. 131. TAXES OF FOREIGN COUNTRIES AND POSSESSIONS OF UNITED STATES.

(a) *Allowance of credit.*—If the taxpayer signifies in his return his desire to have the benefits of this section, the tax imposed by this title shall be credited with:

(1) *Citizen and domestic corporation.*—In the case of a citizen of the United States and of a domestic corporation, the amount of any income, war-profits, and excess-profits taxes paid or accrued during the taxable year to any foreign country or to any possession of the United States; * * *

(b) *Limit on credit.*—The amount of the credit taken under this section shall be subject to each of the following limitations:

(1) The amount of the credit in respect of the tax paid or accrued to any country shall not exceed the same proportion of the tax against which such credit is taken, which the taxpayer's net income from sources within such country bears to his entire net income for the same taxable year; and

(2) The total amount of the credit shall not exceed the same proportion of the tax against which such credit is taken, which the taxpayer's net income from sources

without the United States bears to his entire net income for the same taxable year.

* * * * *

(e) *Proof of credits.*—The credits provided in this section shall be allowed only if the taxpayer establishes to the satisfaction of the Commissioner (1) the total amount of income derived from sources without the United States, determined as provided in section 119, (2) the amount of income derived from each country, the tax paid or accrued to which is claimed as a credit under this section, such amount to be determined under rules and regulations prescribed by the Commissioner with the approval of the Secretary, and (3) all other information necessary for the verification and computation of such credits.

* * * * *

The pertinent provisions of the Revenue Act of 1936, c. 690, 49 Stat. 1648, are identical with the provisions of the Revenue Act of 1938 here set forth.

Treasury Regulations 101, promulgated under the Revenue Act of 1938:

ART. 119-10. *Apportionment of deductions.*—From the items specified in articles 119-1 to 119-6 as being derived specifically from sources within the United States there shall be deducted the expenses, losses, and other deductions properly apportioned or allocated thereto and a ratable part of any other expenses, losses, or deductions which can not definitely be allocated to some item or class of gross income. The remainder shall be included in full as net income from sources within the United States. The ratable part is based upon the ratio of gross

income from sources within the United States to the total gross income.

Example: A nonresident alien individual (engaged in trade or business within the United States or having an office or place of business therein) whose taxable year is the calendar year, derived gross income from all sources for 1938 of \$180,000, including therein:

| | |
|---|---------------|
| Interest on bonds of a domestic corporation..... | \$9,000 |
| Dividends on stock of a domestic corporation..... | 4,000 |
| Royalty for the use of patents within the United States..... | 12,000 |
| Gain from sale of real property located within the United States..... | 11,000 |
| Total..... | 36,000 |

that is, one-fifth of the total gross income was from sources within the United States. The remainder of the gross income was from sources without the United States, determined under article 119-7.

The expenses of the taxpayer for the year amounted to \$78,000. Of these expenses the amount of \$8,000 is properly allocated to income from sources within the United States and the amount of \$40,000 is properly allocated to income from sources without the United States.

The remainder of the expenses, \$30,000, cannot be definitely allocated to any class of income. A ratable part thereof, based upon the relation of gross income from sources within the United States to the total gross income, shall be deducted in computing net income from sources within the United States. Thus, there are deducted from the \$36,000 of gross income from sources within the United States expenses amounting to \$14,000 (representing \$8,000 properly apportioned to the income from sources within the United States and \$6,000,

a ratable part (one-fifth) of the expenses which could not be allocated to any item or class of gross income). The remainder, \$22,000, is the net income from sources within the United States.

* * * * * *ART. 131-8. Limitations on credit for foreign taxes.—* * * *

The operation of the limitations on the credit for foreign taxes may be illustrated by the following examples:

* * * * * *Example (3):* The net income for the calendar year 1938 and the income and profits taxes paid or accrued to foreign countries and possessions of the United States in the case of a domestic corporation were as follows:

| Country | Net income | Loss | Income and profits taxes (paid or accrued) |
|--------------------|------------|-----------|--|
| United States | \$300,000 | | |
| Great Britain | 30,000 | | \$7,500 |
| Canada | 20,000 | | 1,800 |
| Brazil | 40,000 | | 2,400 |
| Argentine Republic | 60,000 | | None |
| Mexico | | | None |
| Puerto Rico | 10,000 | \$100,000 | 1,250 |
| France (dividend) | 50,000 | | 9,000 |
| France (branch) | 20,000 | | 3,000 |

¹ Withheld.

| | |
|--|-----------|
| Entire net income | \$330,000 |
| Total foreign net income | 130,000 |
| United States tax before allowance of credit for foreign taxes | 48,340 |

The income and losses from all foreign countries and possessions of the United States, except the dividend from sources within France, were derived from branch operations. Dividends of \$50,000 were received from a French corporation, a majority of the voting stock of which was owned by the domestic corporation. The

French corporation paid to France income and profits taxes on income earned by it and in addition a dividend tax for the account of its shareholders on income distributed to them, the latter tax being withheld and paid at the source.

The computation of the credit is as follows:

| * | * | * | * | * | * |
|--|-------------|---|---|---|------------|
| Dividend tax paid at source..... | | | | | \$0,000.00 |
| Income and profits taxes paid or accrued on branch operations..... | | | | | 3,000.00 |
| Income and profits taxes deemed under section 131 (f) to have been paid, computed as follows: | | | | | |
| Dividend received on December 31 of the taxable year..... | \$50,000.00 | | | | |
| Income of French corporation earned during taxable year..... | 200,000.00 | | | | |
| Income and profits taxes paid to France on \$200,000..... | 30,000.00 | | | | |
| Accumulated profits (\$200,000 minus \$30,000)..... | 170,000.00 | | | | |
| French taxes applicable to accumulated profits distributed $\frac{50,000}{170,000}$ of $\frac{170,000}{200,000}$ of \$30,000..... | 7,500.00 | | | | |
| Limitation under section 131 (f) $\frac{50,000}{330,000}$ of \$48,340..... | 7,324.24 | | | | |
| Income and profits taxes deemed to have been paid (French taxes applicable to accumulated profits distributed to domestic corporation, reduced in accordance with the limitation under section 131 (f))..... | 7,324.24 | | | | |
| Total income and profits taxes paid or accrued and deemed to have been paid to France..... | 19,324.24 | | | | |
| Limitation under section 131 (b) (1) $\frac{70,000}{330,000}$ of \$48,340..... | 10,253.94 | | | | |
| Tentative credit..... | 10,253.94 | | | | |
| * | * | * | * | * | * |

The pertinent provisions of Treasury Regulations 94, promulgated under the Revenue Act of 1936, are identical with the provisions of Treasury Regulations 101 here set forth.

APPENDIX B

United States Circuit Court of Appeals Second Circuit

C. C. A. Docket No. 19215

INTERNATIONAL STANDARD ELECTRIC CORP.,
PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT
(108866)

I, Alexander M. Bell, Clerk of the United States Circuit Court of Appeals for the Second Circuit, do hereby certify that the docket entries in the above entitled case in this Court are as follows:

| | |
|-------------------|---|
| February 23, 1944 | Filed order of consolidation |
| March 6, 1944 | Filed record |
| March 17, 1944 | Filed stipulation re argument, et al |
| April 19, 1944 | Filed 24 copies, record |
| April 19, 1944 | Filed brief, petitioner |
| April 27, 1944 | Filed appearance, Commr, by J. P. Wenchel, et al |
| May 26, 1944 | Filed appearance, Commr, by S. O. Clark, Jr., et al |
| May 26, 1944 | Filed brief, respondent |
| June 12, 1944 | Filed brief, petitioner, reply |
| August 11, 1944 | Order modified, A. N. Hand, C. J. |
| September 9, 1944 | Filed order for mandate |
| September 9, 1944 | Issued mandate |
| November 25, 1944 | Certified record to A. H. P. |
| December 4, 1944 | Filed order removing exhibits |
| December 16, 1944 | Filed notice |

Dated New York, January 11, 1945.

ALEXANDER M. BELL,
Clerk, United States Circuit Court of Appeals.

United States Circuit Court of Appeals
Second Circuit

C. C. A. Docket No. 19216

INTERNATIONAL STANDARD ELECTRIC CORP.,
PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

I, Alexander M. Bell, Clerk of the United States Circuit Court of Appeals for the Second Circuit, do hereby certify that the docket entries in the above entitled case in this Court are as follows:

| | |
|-------------------|--|
| March 6, 1944 | Filed record |
| August 11, 1944 | Order modified, A. N. Hand, C. J. |
| September 9, 1944 | Filed order for mandate |
| September 9, 1944 | Issued mandate |
| November 25, 1944 | Certified record to A. H. P. (See 19215) |
| December 16, 1944 | Filed notice (See 19215) |

Dated New York, January 11, 1945.

ALEXANDER M. BELL,
Clerk, United States Circuit Court of Appeals.

